CONNECTICUT'S "WARWICK PATENT"

Solution of a Historic Mystery

BY FORREST MORGAN

1910

MORGAN, FORREST, 1852-

Connecticut's "Warwick patent"; solution of a historic mystery... [Hartford, 1910.

cover-title, 29p.

Author's autograph presentation copy.

"Paper read before the Connecticut historical society, Hartford, May 4, 1909; with slight changes."

CONNECTICUT'S "WARWICK PATENT"

Solution of a Historic Mystery

BY FORREST MORGAN

*Paper read before the Connecticut Historical Society, Hartford, May 4, 1909; with slight changes.

Connecticut is the only American commonwealth which begins its historic existence with a Bluebeard closet to which the key is lost. That the origin of a New England State no farther back than the mid-seventeenth century, in the glare of a jealous publicity then and the limelight of microscopic research and endless detailed records since, should retain a baffling mystery at its heart, can be hardly credible to outsiders, and is striking even to those steeped in its investigation. These, in my belief, have missed the solution through failure to note how insoluble it is. This is neither nonsense nor paradox. So long as we consider a problem merely difficult, we shall accept its factors as given, and either shut our eyes to their contradictions or waste our energies in attempting to reconcile them; once we frankly recognize it as impossible, we shall examine the factors to see which are misstated, as one or more of them must be. Studying to account for two and two making five, or assuming that their making it is of no consequence, we lose sight of the fact that they do not make five, and that one of the figures must be wrong.

This is a chief reason why so many eminent antiquarians have left our tormenting enigma without answer: they have never set fairly before their own eyes what its self-contradictions really are, and what acceptance of them involves. Another reason is, that specializing in one field of research usually accompanies, and indeed necessitates, neglect of allied ones, while some questions in any given field depend on facts in others; and the key to our Connecticut puzzle is supplied by Massachusetts and England. Rather curiously, too, the character, conduct, and situation of the actors have never been taken into account; as if documents drew themselves up and persons acted by machinery. On the other hand, if I expand biography a little beyond the bare needs of the argument, I doubt if any will quarrel with what vivifies dead historic bones with living human interest.

First let us hold clearly in mind what the problem is, and what we know of its factors.

From the beginning down to 1639 at least, an English corporate body known in its later form as the Council for New England had sole legal power of granting lands in that section. All settlements there with a lawful title derived it ultimately from that body. Even a royal charter which conflicted with its privileges had no standing in court, though its grantees were subject to the statute of limitations. Until the spring of 1635 none of the lands now forming Connecticut had been granted out by the Council, and its action then was for various reasons a dead letter; but one group of squatters from Plymouth had already settled about the head of navigation on the Connecticut, and another from Massachusetts came a few weeks after the division. Just on the heels of the second party—which indeed had doubtless hurried thither from the knowledge that they were liable to be forestalled—arrived in quick succession two agents representing a company of English Puritans and anti-royalists (including some of the Massachusetts Bay patentees), claiming title to possession of the same district under a patent of some sort, presumptively emanating from the Council. They had no copy of it with them, the settlers declined to budge, and they returned to England. Several of the alleged patentees thereupon wrote aggrieved letters to the Massachusetts authorities; one—Sir Richard Saltonstall, ex-deputy-governor of Massachusetts Bay—professing, in February, 1636, to have had the patent for over four years. He gave no particulars, and did not explain why he had kept it not only unused but unmentioned so long, and given no one in New England—or indeed apparently in old England outside his company—no warning to avoid trespass on his property.

Meantime the company had commissioned John Winthrop, Jr., for a year to be governor of the Connecticut River "and places adjoining," and to establish a fort and settlement at its mouth. He did so at the end of 1635, showed the up-stream settlers his credentials, and demanded that they recognize his jurisdiction; but a commission was not a patent, and they held their ground. Three years later one of the company, George Fenwick, came thither in person; and is said to have brought a copy of the aforesaid patent (or some patent) with him, and exhibited or read it—to whom is not stated, but from the entire history we may infer, to as few as was feasible. We do not know what it contained, except that it is alleged to have been from the Earl of Warwick, ex-president of the Council, to certain lords and gentlemen, and almost certainly covered the territory from Narragansett Bay westward not farther than the Connecticut River; a fact which gives the clue to the mystery, but has never been noted by those who have gone over this field. Whatever it was, it evidently afforded no legal standing. The patentees, finding in poker slang that their "bluff" had been "called," made no further attempt to press the matter; and having other objects beside profit (a point of great importance

in this thesis), they readily allowed and probably aided various other settlements in the territory which they claimed.

Five years afterward, in 1644, Fenwick turned the Saybrook settlement over to the now firmly established Connecticut squatter jurisdiction, and went home to join in the civil war then raging. He asked no price except reimbursement for his outlay, by a ten-year toll on river traffic, which finally amounted to £1,600. But he transferred to the colony no title even to those lands, much less to broader ones, obviously because he had none. He merely agreed to make over to it his rights of jurisdiction from Narragansett Bay to the Connecticut, "if it came into his power;" meaning of course by a validation from Parliament, since the Council for New England was a thing of the past. As it never did come into his power, Connecticut held back £500 for the dereliction, which has a peculiar coincidence with the sum placed in Winthrop's hands later on to secure a charter. And if he assigned to and left with them also his copy of the alleged patent, their custody of it, use of it, and stories about it, do not impress us with a feeling of its vital importance to them, still less with their eagerness to have others inspect it. According to their testimony before the English commissioners in 1661-2, one copy was destroyed in the burning of the Saybrook fort in 1647, and their other was carried across the ocean later by some person unspecified. But oddly, when Springfield in 1648 objected to the river tolls for Fenwick, and made the point that it had never been shown the patent which conferred such authority on Connecticut, no such excuse of the destruction of the document the year before was made, nor was the patent or any copy of it ever shown them. The New England commissioners, one of them Governor Hopkins of Connecticut (seemingly one of the patent company), merely told them that the patent had been shown—he did not say to whom—"at the time of the consideration," (confederation, in 1643?) and that Parliament the year before had reviewed it, and accorded it the same standing as those of Massachusetts Bay and Plymouth—as to which one would like to know how severe was the proof required, and to find the parliamentary minute. The Long Parliament in the last struggle with Charles was not likely to catechize a Puritan colony harshly as to its title to occupancy.

Thirteen years later, on the accession of Charles II., to our surprise we find Connecticut alleging this patent as the legal basis of its existence, and therefore compelled to assume a prior grant from the Council to Warwick, which he had unaccountably forgotten to insert in the deed. But the colony had no formal standing in law, and grasped at any straw of one. The grantees of the now defunct Council (there were three to Connecticut soil as we know it, the Dukes of Hamilton and Lennox and the Earl of Carlisle) might resort to the courts for effective possession of the lands usurped by the squatter swarms, or the new monarch might otherwise abolish the irregular existence of the province. Winthrop, now governor, was sent over with formal instructions to find if possible a copy of the Warwick patent, and have it confirmed; otherwise a new charter

making the western bounds of the colony extend at least to Delaware Bay. What private instructions or understandings supplemented these, cannot be known, but may be inferred from what is to come. It is curiously significant, however, that the first draft contained a passage finally expunged, directing him, in case he could not gain a boundary at least as far west as the Hudson, to drop the proceedings, as it was not worth while to spend money on any less favorable charter. Obviously the real reliance was not on either the old patent or a new one, which were convenient but not indispensable; but on the equities of actual settlement as against paper grants not made good. The sequel showed that this was in fact their safe holding ground.

The old patent was obtainable only at so many removes that if it ever had an existence such as its face proclaimed, the takers had obviously attached no importance to it, and it might have suffered any desirable change in transcription. Warwick's patents, indeed, had an unfortunate aptitude for being lost. That of Massachusetts Bay was so when its purpose had been served and a royal charter had superseded it; and I strongly suspect that the reason why the Plymouth deed has not followed its companion is because the royal charter to supersede it was never obtained. Certainly no instrument intended as the basis of effective rights was ever so carelessly kept or recorded as we are required to believe of this Connecticut deed. Warwick with his son and most of the other patentees were dead: but his nephew and heir apparently could find neither the patent nor its hypothetical Council basis; no copy of it was discoverable, we may assume, in the households of any of the specified eleven original patentees, alive or dead, or of the six or seven others who would seem to have joined later; the asserted fate of Fenwick's copy we have seen; and all that Winthrop could find was a copy of that copy, among the papers of the deceased Governor Hopkins, who had returned to England a few years before. He had no colonial business for which to use it, and why he should have carried it away if it was worth anything to Connecticut is more than singular. They would naturally have kept it as carefully as they did their actual charter later on.

This paper is now in our State House; and it is in every sense a curiosity. It is unique among historic title-deeds in not merely having always been valueless except as a scarecrow, but in making no pretense of being anything else. A reading of it leaves one in no doubt why the holders kept it sacred from the gaze of any one specially anxious to inspect it. It was not from the Council, which is not mentioned in it, but was a private deed of sale from the Council's president, the Earl of Warwick, and not even averring that he owned the lands he thus conveyed, or that any one did or had the right to dispose of them. But strangely, considering Fenwick's contingent offer of transferring jurisdiction from Narragansett Bay to the Connecticut, it covered everything thence to the Pacific Ocean as well. This fact must be carefully borne in mind. It was dated March 19, 1632, over three years before settlement was attempted under it; which again was strange for an exceptionally energetic group, who

were actively colonizing elsewhere and had the business fully in hand. As to the assumed grant from the Council to Warwick, which alone could make this of any worth, nothing of the sort was on record, the Council was long vanished and its minutes with it.

As it happened, however, these were chiefly matters of bygone history and worry. The last thing which Charles desired was to embroil himself in a quarrel with a fulsomely loyal colony, to the reverse of advantage; and he readily accorded Connecticut a "renewal" of the Warwick instrument, on a firm legal footing, with New Haven added as a bonus. Two years later, the Hamiltons were roused to assert their rights under the Council grant; in all probability by agencies connected with the Duke of York's grant of New York, including western Connecticut, as the regrant of the eastern half to new claimants would render it much easier for the Duke to seize the western without actual war. They petitioned to have the new charter revoked, and themselves installed as owners of the lands from Narragansett Bay to the Connecticut—the very ones we should have identified with the claim of Fenwick and his company but for Winthrop's discovery of that fortunately surviving "copy." It has been asserted as a legal maxim that a royal charter ipso facto revoked earlier grants; but in no colonial case does this supposed principle obtain. Connecticut certainly set up no such defense here: but first the patent from Warwick, whose original and whose validating basis had both disappeared, and of whose only two copies one had perished in the Saybrook fort (as they now remembered, though it had slipped their minds the year after the fire), and the other had been carried overseas (name of the abstractor not stated) and could not be reclaimed; second and much more pertinently than this feeble figment, to which no court would pay a moment's attention, that they had earned their occupancy with their own sacrifices of money and labor, blood and tears. The commissioners to whom the case was referred pronounced the latter claim good; and barred out the Hamiltons as having laid out no money or made attempt to enter on their property for nearly thirty years. Some twenty years later, the Connecticut people stated that at this time Lord Clarendon had declared the old patent valid; but as with the assertion as to Parliament, we lack too many points of knowledge for confidence.

In 1683 the claim was once more revived by a new Hamilton, the Duke's cousin and heir. As Edward Randolph was made attorney to prosecute the claim, and as the period accorded with Randolph's general assault on New England liberties, we may guess that he instigated the suit. The same defenses were made as before; and again the decision was given for Connecticut on the same ground, with the more emphasis that now the Hamiltons' burden of laches had mounted to nearly half a century. This principle was equitably applied in other colonial contests later, and notably to Connecticut's behoof again in the Wyoming case. In a word, the English government never regarded the New World as "unimproved property" to be held

vacant for a rise by speculators, even titled ones. That item at least may be left off its indictment.

So ended the being of the Warwick patent and its assumed basis as practical politics, and began as historic enigmas. For a century and a half there was no basis of argument for or against their genuineness except probability, and the sense of that seems to have been determined mainly by an imagined obligation of State loyalty; as if a doubt of the patent impugned either the historic right of the State to exist, or the personal honor of the officials who (infrequently and briefly and only when driven into a corner) asseverated its genuineness. So far has this gone that one or two State historians flatly affirm not only that the Council had made the grant to Warwick, but that the King had confirmed it; a statement copied by no less a man than Alexander Brown, besides lesser writers. There is no authority for either allegation. There was an added argument from probability: was it likely that a body of the ablest men in England—one of them the president's own son—should accept a grant of moonshine from him, and propose to stake large outlays of money and time and their prestige upon it, either when he could give a solid one, or when the fact that he could not give it was evidence that it might be made useless at any time by a grant of the same territory to others? And was it likely that their supplanters should use it for many years as a basis of jurisdiction when it might at any time be exposed and defied? This last ignored the actual history which I have stated.

But the opposing arguments were crushing, though they have mostly remained unexpressed. It was not likely that the same body of the ablest men in England would neglect to keep a copy of a document which gave them a secure title to a province, or that having one or more, they followed the lead of their principal in losing them by fire or accident or what not. It was absurd to suppose that if Warwick had one, his lawyers should fail to make any mention of it in a document deriving all its validity from it, and that the lawyers of the grantees should have been equally careless in precisely the same spot, allowing an impregnable deed to be reduced to a worthless quit-claim. It was not likely that if they had any legal standing ground, they would have allowed themselves to be so easily cowed by bare refusals of those who had none whatever, and have resolutely avoided exhibiting their legal bulwark, which if genuine they would have constantly proclaimed and flaunted.

Either view leaves unexplainable difficulties. And there are others not special to either. In any case, why did the grantees wait so long before attempting to utilize their patent if valid, and why did they think it easier to utilize three years after its nominal date than at once if invalid? All other colonial grants were in the open, for schemes at once pushed forward. Indeed, we know that the leaders among these very patentees had actually colonized islands in the Gulf some time before seeking a patent for them. This of ours alone was for a secret

transaction which took no shape for years afterward, and was not as a whole made public then.

Another question of much broader import suggests itself. Why, of all conceivable times for playing a desperate hand, did a group of Puritan and anti-despotic magnates, seeking for themselves a refuge for Puritanism and popular liberty in New England, choose the year 1635, when it had just been officially proclaimed that all these refuges existent were to be wiped out or converted to orthodoxy; when Laud and his commission were lately authorized to investigate all colonial governments, and remodel or abolish any of which they disapproved; when Warwick's great rival Ferdinando Gorges, a fervid royalist and Churchman, had just been appointed governor-general of all New England, with the avowed intent of constructing a unified orthodox feudal principality, and was shortly to start thither with a thousand troops to put down resistance, and his much more active and relentless associate John Mason for vice-admiral; when Morton of Merrymount was pushing a suit to vacate the charter of Massachusetts, and in fact obtained judgment against it shortly after; when, in a word, colonial Puritanism and republicanism were to be extinguished in blood if need be, and a gigantic obedient orthodox viceroyalty was to supersede the Puritan commonwealths all over New England? Was this a time for Puritans and opponents of despotism to throw themselves in small numbers into a part of the wilderness included in this very régime of reaction, too weak to defend themselves by force, and with any legal rights certain to be wholly disregarded? That the colonies were saved as by a miracle is beside the point: that could not be foreseen. This last problem and the delay of the patentees form really one item, which, though apparently unconnected with our theme, will be seen to have an important bearing upon it. Its very statement would seem to suggest an answer which will be given later, and whose novelty does not impugn its probability.

The first fresh evidence upon the subject was discovered in the English Record Office during the first half of the nineteenth century. The records of the New England Council, as said, were missing; but transcripts of certain parts of them—probably made for Randolph's use, as they seem to date from 1674, the year before he went to New England*—turned up and were used by Palfrey in his "History of New England" in 1859, and published in full in the Proceedings of the American Antiquarian Society in 1867. A little more was discovered later, and published in 1875. By remarkable good fortune, the first part included the very minutes necessary to our study. They disclosed the fact that three months after the date of the so-called

6

*In this case the originals obviously existed in 1661, and might have been seen by Winthrop if he had searched very hard. He had excellent reasons for not doing so, but others had not, and it is very strange that these conclusive documents were not adduced by the commissioners then or by the Hamiltons later, if they were so easy of access. There is no arriving at the bottom of the singularities in the whole history of the Council for New England.

Warwick patent, the Council took into consideration a draft of a patent to him, covering from Providence River (undoubtedly meaning all Narragansett Bay) thirty miles west—or say to the middle of Windham County; that he asked to have it made out not to himself, but to his son and associates, beyond doubt the same group who are named in our patent; that it was to be reported at the next meeting; that it was not taken up then, nor seemingly ever again; that Warwick did not attend that nor any subsequent meetings; that though he was not deposed from the presidency for some years, the control was taken out of his hands and the meetings and Council packed with his opponents; and that three years later the Council granted to Hamilton the very section which had been rough-drafted for him.

This answered conclusively the chief argument of the patent's defenders, though it is customary to say merely that it "renders the grant improbable." If Warwick already had a grant for a strip across the continent in March, he would not be asking the Council to give him ten leagues of the same territory in June; and if the Council had once patented Eastern Connecticut to him, they could not patent it over again to Hamilton. It also proved that if he had not a grant for the lands in June, he never did have it; for if he could not obtain it when he was in good relations with the remainder of the Council, he was not likely to do so when he had hopelessly broken with that body and been ejected from its control, and never regained good relations with it up to the time of its dissolution.

It did seem on the surface to indicate, however, that he had at first expected to make good the dummy patent represented by our copy, and even at the last to make good a part of it. This was fully satisfactory so long as one did not examine what it meant. In fact it leaves the puzzle indefinitely greater than before, and, indeed preposterous. Whether the grantees hoped to have a valid patent in a few weeks or feared that they might not have one, why in the world should they waste time and money in devising, and paying fees for drawing up, a worthless paper which must equally be thrown away whether the new one were gained or lost? This one would not even have been made good by the grant from the Council of everything it specified: that it would have been so is a common misstatement due to not reading it with any care. It granted nothing contingent, ended with itself, and would not have been worth an iota the more if Warwick had obtained for them a grant of the Council's entire property the next day. It would have had to be replaced by a new one, and they might as well have waited for the new one. Further, a quit-claim taken out while a real deed is hanging fire is an instrument designed to use in a hurry, before others can preoccupy a place, from among the outside throng who have no claim at all, or to enforce legal proceedings and so delay final settlement until more efficient weapons can be brought into play. This, however, was obviously not to use in a hurry, but to lay aside for a convenient future, while in fact

none of any kind was used for years; and this was the sort of instrument which there was no object in laying aside, since they could have an equally good-for-nothing one at any time on a day's notice. If they wished for a patent within a short time, they would have waited to see if they could not obtain one, which Warwick's position in the Council and his previous unselfishness as to grants warranted them in confidently expecting, and which in fact they would have obtained without difficulty but for an unforeseen débâcle. If they wished for more than the grant could be hoped to convey,—and in fact, the records and other history make it clear that Gorges never would have assented to anything like so immense a grant as our copy recites, which would have conflicted with his lifelong purpose,—and designed to enlarge it fictitiously for use where it might not be questioned, they would have waited to see how much soil they received in order to see how much must be pieced out with wind. Plainly, the apparent occurrence never took place: it violates every principle of human conduct. Rational beings do not act in such a way. This is not a "difficulty": it is an impossibility and absurdity. That patent, as we have it, was never issued at any date. What was issued, and what happened to it, will appear later.

Another question was also added to the list: What was the cause of the sudden break with Gorges and his interest, which cost Warwick and his friends the expected patent? It is strange that none of the leading New England scholars even attempt a guess, with the Council transcripts before them pointing straight to the answer, in connection with the other history familiar to them; and the answer given by others is very inept. I suspect that the latter are thrown off the track by a singular blunder of the usually accurate and deservedly trusted Palfrey, who misdates by two years an entry of the Council records containing by inference the real cause of the breach; but it is certainly strange that the very editor of the records gazes wistfully and helplessly at the exit without noticing it.

For an explanation of the problems we must resort to general history, some of it commonplace knowledge. The Anglo-Spanish treaty of 1605 closed the long era of chronic warfare with Spain, and untied the hands of English statesmen and adventurers alike for peaceful colonization. The government fixed two centers of control in the heart of North America, to hold the ground against the Spaniards at one extremity and the French at the other: a southern (which became Virginia) to keep the Spanish from coming north, a northern to keep the French from coming south.

The latter, say from Pennsylvania to Maine, was exploited by a group of West-England magnates whose moving spirit was Sir Ferdinando Gorges of Somersetshire, a military and naval veteran of about forty, now captain of the defensive works at Plymouth. He belonged to one of the oldest and most highly connected families of gentry in England, which was forever gaining knighthoods and making distinguished marriages, but

somehow always fell just short of obtaining the full peerage. Beginning with a Norman companion of the Conqueror, he could boast of descent from Edward the First, and quite closely from the Duke of Norfolk slain at Bosworth; one cousin of his father had married the daughter of an earl, and another the widow of a marquis. All these conditions, and his own energy, conscious ability, and public employment, roused a natural ambition to achieve higher rank; and his share of the wave of colonial enthusiasm which swept over England took form as a day-dream of becoming a great American viceroy in the North. For nearly forty years more of unceasing effort and disappointment he chased this Tantalus fruit, forever seeing it just slip away from capture; and poured perhaps forty or fifty thousand pounds of his money into the bottomless gulf. For him, there was a grim fitness in the blundering armorial cognizance of his family, a whirlpool. He stands as the permanent background of all New England history for the first generation; yet of all the figures prominent in American colonization, his name is perhaps the least familiar to the mass and his personality the hardest to realize. That he never in all this long period came to America himself, and that no portrait of him is extant to place in schoolbooks and popular histories, may account for a part of this; but not the whole, for it does not entirely devitalize many others who played far less parts. It is true also that the great commonwealths of Southern New England owe him little, most of them indeed less than nothing, and our interest lies in those who escaped his intended net; but New Hampshire and Maine are his immediate children, and I doubt if they see him more clearly. The truth is, there was nothing really great, or picturesque, or sympathetic about his action or character; nothing racily distinctive for the imagination to lay hold upon. He was an energetic, dogged, and fairly capable man of action, with few general ideas and not always quite certain about those unless they touched his interests; he had no large impersonal conceptions, and too little variety or flexibility of thought for the first rank even practically; nor had he the dash or fire or intensity which often give equally narrow and still more selfish adventurers a lasting hold on our memories. Even his lack of courtier-like flatteries, which in an age of servile adulation attracts us to him, was probably due more to intellectual stiffness than to dignity of character.

The Plymouth Council, which from first to last he really though not always nominally headed, attempted first a plantation in Maine, which to his last days remained the center of his vision and the seat of his cloudland viceroyalty, as the best place to control at once the fisheries and the fur-trade from which he expected a fortune. One year finished its life, and the membership of the Council largely dropped out and joined the London or Virginia Company. Gorges and a few others kept up the formal organization for the sake of the future and its chances, and made some individual ventures under the shelter of its aegis; Gorges was the soul of such life as it had, and continued to expend money in attempts to colonize along

the New England coast. Captains Harlow and Hobson (one of whom is credited with bringing to New England the small-pox which broke the Indian strength in New England, and made the Puritan settlement easy), and that superb Ulysses, Thomas Dermer, were his employees; and John Smith's last two failures were financed by him.

At last he became convinced that a control of the seas as well as the land was needed for success; and to secure such a tremendous monopoly, replaced the wreck of the Plymouth Council with a new company compendiously known as the Council for New England, comprising a host of the greatest nobles and most powerful commoners, and expert navigators and colonizers, in the kingdom—forty in all. But the very hugeness of the "trust" drew upon it a fury of popular dislike and dread; its rival the Virginia Company assailed it unremittingly as infringing its own patent: and while it won a technical victory, Parliament's refusal to enforce its right against interlopers cut the roots of its success, and it virtually went to pieces. Gorges as before remained the real Council for all practical purposes, and was recognized as such by all England from the king down. But Charles I., shortly after his accession in 1625, plunged into war with France to aid the Huguenots, under Buckingham's prompting; and Gorges for some years was so fully employed that he could not attend the Council's meetings or keep advised of its precise doings, though he insisted on holding the decisive power as to grants. His ablest lieutenant, Captain Samuel Argall, died during the war; his next best, Dr. Barnabe Goche, died or left it: and the headship fell to a man of very different stamp from Gorges, also a promoter of colonial schemes which he had at heart, but most of them for widely divergent purposes.

This was Robert Rich, Earl of Warwick, nephew of Elizabeth's Earl of Essex who was executed for rebellion. Warwick perhaps did not love Gorges, for having professed to take share in this and then dealt its death-blow and turned state's evidence; but he was a man who kept his own counsel. He was a much abler and more constructive man than Gorges, with an exterior of jocular good-nature and an inward temper of unsleeping vigilance and well-realized plans; masking a steady resolution and consistent purpose under a surface of high spirits, bonhomie, and abundance of "juicy" stories. Yet while the rather humdrum Gorges was ardently a devotee of throne and church, Warwick's political affiliations were all with the opponents of both. That he should have so drawn toward the Puritans is one of the curiosities of history; not impossibly to be explained by the law of reaction from the astonishing cuckoo's nest which bred him, a mother without virtue matched by a father without self-respect, and of which perhaps not all the brood could have qualified under Solomon's test of wisdom, while some were much too wise. He may have thought that a society in which the lady lost no social standing until she married her lover decently, needed Puritanism. He was the most useful of friends to his party, because his looseness of speech, and perhaps by unjust inference, of life, made it hard for most people to take his

Puritan leanings very seriously. In fact, while the Virginia Company was alive, he led the faction in it opposed to the Sandys-Ferrar management, which wished to do what the New England settlements actually did. But his views rapidly developed, probably along with the Stuart despotic ones; and by the time Charles had definitely locked horns with his people, and abolished Parliaments for a supposed permanence, we find Warwick organizing the most remarkable group of uncompromising anti-monarchists and anti-Churchmen in colonial history. After the Virginia Company's suppression in 1624, he devoted himself to the New England Council; and quietly advanced the Puritan interests with patient tenacity, and a large economy of needless frankness toward their opponents in it. It was probably after Argall's death that he was made president, Gorges remaining treasurer; but it was evidently understood that Gorges was not only to be consulted before taking definite action, but should have the deciding voice, as was but fair when he had carried it and financed it so long. Warwick wrote to him in his absence for permission to issue any desired patents: it might be assumed in advance that Warwick would tell him no more of the truth than the bare minimum needed for the permission, and our problem is a part of the result.

A glance at the list of Warwick's patentees shows that he was systematically strengthening the Puritan colonial refuges. He gave the Massachusetts Bay patent of 1628, and then secured a royal charter to make their right irrevocable; he gave the Plymouth patent of 1630, and tried to replace that also with a charter; he attempted to give the patent, or a patent, which is our theme tonight. The first of the three (Massachusetts) Gorges certainly did not know the necessary truth about, and when he learned it there was an explosion; the second (Plymouth) Warwick signed alone and quite possibly issued alone, and it is more than questionable if Gorges knew its provisions in full; the third (Connecticut) afforded at the time no opportunity for deception, though ultimately it was the basis of a remarkably fine example of the species. But we must remember that Warwick was not in the least self-seeking in all this. His colonial schemes for profit were conducted wholly outside: throughout his entire connection with the Council, while Gorges was making splendid grants to friends and relatives, ultimately to rear his own structure upon. Warwick never sought a patent of an acre for himself, nor even for a relative except in the miscarriage of June 1632, and that was of a different nature. It is true that he was a much wealthier and more highly placed man than Gorges, and had not his motives for wishing transference to another sphere; but the fact remains the same. And his further defense is, that neither was Gorges acting above-board and in good faith. He secretly intended all along, when Warwick's Puritan grantees should have firmly anchored themselves on his lands and made them valuable, to recall the patents and revoke the religious permissions, and reduce them all to royal and Church order with himself as chief. He was ostensibly shutting his eyes to toil them on to

his territory, on an understanding which he had no design of keeping. Sherley so wrote in effect to Plymouth in 1629, years before the policy was actively broached; and the future justified his suspicions.

Now in 1632 Gorges had given to his son Robert a grant of land on Massachusetts Bay, which, with the immemorial English clearness on American geography, was so defined as to convey nothing in law, but on a fair interpretation extended from Charles River to Nahant and thirty miles inland. The next year he issued to his leading lieutenant John Mason a grant for the territory from Salem to the Merrimac, which Mason named Mariana; and a few months later the two obtained a joint patent from the Merrimac to the Kennebec and sixty miles inland, which they called Maine. The two Gorges' and Mason thus controlled everything from Boston to Augusta; all northeastern Massachusetts, eastern New Hampshire, and western Maine. Gorges' air-castle was taking visible shape. Robert died shortly after, and his patent was inherited by his brother John; who, just before the issue of the Massachusetts royal charter, sold it in two parcels to John Oldham and William Brereton. But these would come under Gorges' government if he received it; and of course he wished to protect his son's grantees.

Meantime Warwick had issued the patent of 1628 to the Massachusetts Bay Company, for three miles south of the Charles to three miles north of the Merrimac, and extending to the Pacific. He had ostensibly secured permission for it from the absent Gorges; but, according to the latter some years afterward, he did so by misrepresenting its provisions or secretly defying Gorges' instructions. Gorges on his own story—which need not be doubted—had stipulated that it should not prejudice his son's rights; apparently he did not think of its invading Mason's also, and said nothing on that point. He supposed, beyond doubt, that the Bay patent was only a sub-patent merely for rights of occupancy, and reserving the jurisdiction of the Council, and of himself and Mason and his son's grantees beneath it. But the grant in fact conveyed absolute rights to the company, and thus not only extinguished the ownership of himself and Mason from Salem to the Merrimac, and ousted Robert's grantees, but cleft his expected viceroyalty directly in twain, cutting a huge section through it from side to side. It is rather curious that one of the Bay patentees, John Humphrey, was Robert Gorges' brother-in-law. But his brother-in-law was dead; and moreover, the Bay Company held the latter's patent invalid in law for defective description, as it unquestionably was: "ten miles on the north side of the Bay of Massachuset" defines nothing anywhere.

For some years Gorges and Mason remained in ignorance of these facts. When the war was over, Gorges resumed his attendance and began issuing patents to open up the Council's territory and prepare for his sub-kingship. He divided up the joint patent so as to give Mason in severalty the land from the Merrimac to the Piscataqua, which Mason named New Hampshire; the Maine coast was covered with grants; Gorges prepared

to lay out a great city for a capital at the junction of the Kennebec and Androscoggin, with a ring of huge baronial estates surrounding it, for a viceroyal court of his subordinate lords. During a brief absence of his, Warwick seized the opportunity to issue the patent of 1630 to the Plymouth Company. Gorges had perhaps begun to be suspicious, and certainly did not wish the New England colonies to escape his control; at any rate, when the royal charter was sought for Plymouth the following year, it was pretty certainly he who was largely responsible for its never passing the Privy Council.

After a break of over eight years in the records of the New England Council, they recommence in November 1631; and it is needful now to fix our attention closely upon what they tell us, and the order in which it is told. There are nominally thirteen members, but for nearly eight months Warwick and Gorges are the sole attendants, save one other at one meeting; and the sole business is granting patents to the Gorges-Mason interests. Suddenly there is a radical change. On June 21, 1632, the aggressive Mason, Gorges' right arm outside the Council for years, is taken into it for voting strength, with another of Gorges' partisans; weekly meetings are voted, and a secretary hired. Six more members are admitted within a week, all pro-Gorges. On the very first meeting after the addition of the first two recruits, John Humphrey, close kinsman by marriage to Gorges, comes before the Council to complain of its demanding a license from the Massachusetts company, when their charter releases them from it; and it is impossible to suppose that he burst in upon them with this complaint without having privately complained to his relative beforehand. When Gorges began reinforcing himself as above, he had evidently just heard of this., and suspected a "joker" in the patent which had overridden some of his rights and plans. "Some of the Council," we read, "thereupon ask to see the patent," since the Bay Company allege that it "preindicted former grants." Obviously its scope is a revelation to them. Humphrey says it is in New England, and they have often written for it but never received it: as he went there permanently himself shortly after, he perhaps went after the charter and was not willing to return without it! The Council summon him and Governor Cradock before the next meeting for further answer. Against this, a committee of five—the two Gorges', Mason, and two others, but not Warwick—are to prepare Warwick's patent, with the limits we have seen, and to investigate the powers granted under the Massachusetts patent.

Evidently a hornet's nest has been stirred up, for two meetings are held within the next three days, packed with Gorges' partisans, and neither of which, nor any after, does Warwick attend; the future meetings are not held in his house; the patent is never again mentioned; and the Council takes action to make sure what patents he has issued without their knowledge, and that he shall issue no more. He is to be "entreated to direct a course for finding out what patents have

been issued for New England," which looks as if only informal memoranda had been kept of the proceedings, and he had carried those off with him: of course some records must have existed, for grants cannot have been made at random without consulting former ones. He has certainly carried off the seal, and there is no evidence that despite their tearful pleadings he ever returns it. Meantime it is resolved to enlarge the Council from its then twenty-one members to the original forty, and procure a new patent for it (of course with privileges stiffened). All patents given to date are to be brought before it, perused, and confirmed, "if the Council see fit." We may guess which they would not have seen fit to confirm, and also feel Warwick justified when the Council thus treat their former patents as waste paper at their discretion. One wonders how the new ones would be any more secure. Many other new activities are provided for.

In a word, Gorges was proposing to push his former schemes to a finish without delay; and there is little doubt but the discovery that Massachusetts had escaped his control, and lay athwart the center of his proposed dominion, was the cause of this sudden spurt of renewed energy. There is no doubt whatever that it was the discovery of Warwick's having, in Gorges' belief, tricked his partner and his son's grantees out of two great parcels of land, and driven a vast wedge through the center of his dreamed-of viceroyalty, that led to this outburst of alarmed activity and fortifying of his own side, and his permanent break with Warwick and refusal to issue his patent. Warwick on his side, all hope of using the Council for his desired purposes being at an end, abandoned it and worked elsewhere. But his influence and resolution were still too formidable to make war to the knife desirable, and perhaps his possession of the seal made them wish to conciliate him into returning it; at any rate, he was not ousted from the presidency till it was decided to wind up the Council altogether.

The cause of the breach is so plainly intimated by the records as above, that its never having been noticed is most singular. As to the explanation, when any is attempted, that it was due to Warwick's favoring the Puritans, Gorges had known this from the first, and as we have seen, was secretly finding his own account in it. There was no surprise for him in this phase of Warwick's action. The genuine and most unpleasant surprise, which broke off all further co-operation, was vulgarly practical and not sentimental: it concerned pockets, not politics. If further proof is needed, it is afforded by the fact that Gorges and the Council to the last never ceased complaining of the "surreptitious" patent of Massachusetts, and made it an excuse for winding up the New England Company, which would be more convincing if some of the other excuses were not so fictitious.

We now know why and by what a narrow margin the patent was lost: Humphrey's complaint, or the exaction from the Bay Company, came about a week too soon, though in fact it was a very great blessing in disguise. But we have much further

concern with Gorges' policy toward Warwick's patentees, just outlined. His old baronial scheme was modified, from there being now peopled territories instead of naked territories to people. New England was to be divided into provinces, each with its governor and council, and himself as governor-general over the whole: a mighty viceroy, with an ecclesiastical second to reduce the schismatics to conformity. The first step was to revoke the Plymouth patent and the Massachusetts charter. The latter, as the more difficult and the more important, was first assailed, in December 1632; not nominally by the Council, but backed by those interests. Warwick and his friends stood by the colony, the King as yet was glad to have the rebellious elements out of England, and the attempt collapsed for the time. Shortly afterward William Laud became archbishop of Canterbury, and undertook to enforce conformity, stop the emigration of dissidents, and seize the Massachusetts charter. The latter failing because the charter, in foresight of exactly such attempts, had been kept in New England, the plan was adopted of a colonial commission with full executive and judicial powers, to find reason for vacating the charter and vacate it accordingly. In April 1634, Laud and others were empowered, among other extraordinary privileges, to frame colonial governments, remove governors, appoint magistrates and judges, establish courts, and have power over all charters and patents, "and to revoke those surreptitiously obtained." "Still harping on my daughter." This grievance never leaves the Council's minds, and that they were back of this is shown further by Gorges writing to Charles a few days later outlining his governmental scheme for New England; and shortly afterward we find him selecting his provincial governors.

At the news, Massachusetts with a thousand or so of fighting men prepared for war with the kingdom of England: authorized the magistrates to conduct it for a year if it came, voted to fortify the harbor and coast towns, ordered volunteer drills, and unanimously resolved not to accept a governor-general, but to defend their liberties if possible, "otherwise to avoid and protract."

Gorges then turned to Plymouth, and wrote to Laud that as it adjoined the Dutch (he evidently had his country's notions of our geography), and was disaffected both to royal and church authority, it was "more than time these people should be looked unto." He also urged that all dissident emigration should be stopped. Laud and the King accepted these views cordially, as the whole was part of a concerted plan of the court to extinguish political and religious dissidence at once.

Then with seven others of the Council, Gorges arranged a scheme for dividing up its territory among themselves. This was agreed upon February 3, 1635; Gorges announced it to Secretary Windebank March 21, and urged a prompt recall of the Plymouth patent. Five days before this, Sir Richard Saltonstall, of the Warwick patentees and the Bay Company, had signed articles with Francis Stiles and his party to go to Connecticut. April 18, Warwick was replaced in the presidency

by Gorges' second cousin, Edward Lord Gorges; a week later the Council assigned reasons for winding up which were mainly fictions, but the undying "surreptitious" charter of Massachusetts is still in the foreground. The next day Charles' appointment of Gorges as governor-general was read. May 5, Thomas Morton of Merrymount was made solicitor to prosecute the suit against Massachusetts Bay, which was decided against the colony in September; and in June, John Winthrop the younger had been commissioned for a year as governor to the mouth of the Connecticut, by Warwick's Puritan patentees. In October, Mason was appointed vice-admiral of New England. All seemed over with Puritan hopes, and New England doomed to consist of eight feudalized and clericalized provinces and sees. The popular governments must abdicate, the colonists would have no right to their properties, and must pay blood-money to new proprietors or "trek."

But the whole fabric of the court's and Gorges's vision vanished like a cloud city. Mason, the executive heart of the enterprise, died in November; a ship built to carry Gorges and his vice-court and his regiment of regulars to New England racked to pieces in launching; and Laud and his commissioners were so busy pulling their own house down about their ears that they never found time to attend to the colonies.

But what had the men of Massachusetts in mind when they made arrangements for war? Did they really imagine that their petty coast forts and few hundred militia would beat off the armaments that had overrun France and defied the Armada? Endicott, it is true, was reckless and blindly fanatical enough for anything; but the remaining leaders were not, as is shown by their action regarding his mad folly in cutting the cross out of the English flag. I think their prevision that the war might last a year or more shows what was in their minds, and we are deeply concerned with it. England in the then condition of foreign politics could not dare, it was felt, to draw off any large percentage of its military and naval force to coerce the little colonies in America. The Thirty Years' War was desolating the heart of Europe, and in spite of themselves the government might at any time be drawn into it on the Baltic issue or the Channel issue. At this very moment Charles was pretending that a French-Dutch plot against English commerce made the assessment of ship-money necessary to build and equip a new fleet. All that Massachusetts would have to contend with, the leaders might think, would be a trivial force, which she might hope to harass and delay for a considerable time; if it finally gained possession of the coast villages, there was the vast inaccessible wilderness to which they could retreat if overborne, and starvation would compel the soldiers to a speedy withdrawal from the land. Before hope was past, the passive or active resistance of their friends at home might tie the government's hands; and at the worst there were new lands on the Connecticut where they might "trek," and where armies hardly could or would follow them. These ideas might not be fully shaped, but

something like them must have lain in embryo at the bottom of the leaders' minds.

And this brings us directly into relation with our Connecticut patentees. What were their ideas, after waiting since 1632, in choosing this extraordinary time for migration? The natural answer will be that the question is super-subtle. Three thousand Puritans in this year came from England to Massachusetts, the heaviest accession in its early history; a considerable number removed from Massachusetts to the tempting meadows along the Connecticut, unaffected by political hopes or fears, and the appeals and reproaches of the Massachusetts magistrates made no mention of the obligation to stay and not weaken them for the coming contest: and there is no reason to suppose that Saltonstall and his companions had other motives and hopes or apprehensions than they. The sharpened tyranny and enforced conformity under the Laudian regime were simply making conditions in England intolerable and extinguishing all hope for Puritans as such, and they took their chances in the wilderness because so far off there was at least some possibility of evading the church authorities. Saltonstall wanted a more southerly climate than Massachusetts for his daughters, whose health had driven him back to England; Say and Sele was poor for a lord, and wished to make himself wealthier and more powerful; Heselrig was on fire with greed: and so on.

But again this is not fully satisfactory. The English emigrants in general were a miscellaneous host who came when they felt the grind or saw the opportunity: they made no choice of times. These of ours were a small group of very exceptional force, position, and resolution, who could choose their own time over the years; and who had almost certainly meant to come or send outriders in 1632, and did not do so until three years later with no better legal backing. Why they held back from the one resolve and embraced the other are questions which do not answer themselves, and are a part of our questions to be answered. As to Hooker and Haynes and the others who left Massachusetts in the heart of the trouble, it is obvious that a charge of desertion would not only be too impudent to put into words, but even so, injudicious to record; and if their temper and ideas were anything like those which they transmitted to their actual or spiritual descendants, they thought the Massachusetts action pig-headed and childish, and considered their own chances much better out of it. Their method of securing what they wished was to avoid precisely such advertised defiance, which would only pique the government into a struggle to the death; to promise, on the contrary, the most loyal obedience, and then do as they liked, trusting to distance to wear out the government with excuses. But our group of patentees was of a notably different make-up, and we cannot quite credit their acting upon the same motives.

A glance at their personality will afford significant help. What first strikes us in the group is the extraordinary militant as well as political leadership of its dominant portion. This

comprises almost the same men as in Warwick's Providence Island company, except that Hampden in the one matches Oliver St. John in the other, a Roland for an Oliver most literally; but in the latter company, a pure mercantile speculation for profit, these are quite lost in the great crowd of merchants and adventurers, while in our case they and their immediate kin make up nearly the entire body. To read the list transports us at once to the very forefront of the Long Parliament and the Civil War: it is a beadroll of unsurpassed statesmen and soldiers. It is almost enough to say that of the famous five members of Parliament whose seizure Charles I. thought would end the revolt against his authority, three are on this list. Warwick the grantor, despite his jovial exterior, was a man of high temper and determination, ready for a duel; he became the Parliament's Lord High Admiral in the Civil War, and not a mere political shore-duty admiral, but who fought his fleet in person with courage and success. Of the original eleven, John Pym, "King Pym," though carefully avoiding a contest with the court till success was reasonably assured,—a very Connecticut trait,—was the uncompromising leader of the Commons from the Short Parliament on, begetter of the Grand Remonstrance, chief agent in bringing Strafford to the block, head of the five members, organizer of the irreconcilable revolt which followed. John Hampden, Cromwell's cousin, "the father of his country," was the protagonist of the ship-money contests, leader of the Commons next to Pym, another of the five members, slain at the head of his regiment shortly after the outbreak of the war. William Fiennes, Lord Say and Sele, was a fearless, proud, intractable aristocrat, the very type of the great oligarchs who have led the march of progress through half of the ages and held it back the rest. In Venice he would have been a chief in the Council of Ten and a powerful doge. In England he was the leader of the Lords almost as much as Pym and Hampden were leaders of the Commons. His pole-star was the rights of his class, and he was equally determined not to have them menaced by a monarch or a populace. He refused to come to Massachusetts unless all the governors in the future were chosen from a hereditary aristocracy. But the monarch's tyranny chanced to be the immediate menace, and in England the rights of the aristocracy are inextricable from those of the Commons; and so for many years he fought for the general liberties against the Crown, and the ecclesiastical establishment as the agent and twin of the Crown, with unending contumacy on every subject and every occasion. He made the lives of the ship-money judges a burden because they would not try his case after deciding Hampden's, and he let his goods be distrained. In the Lords he was with one exception the sole root-and-branch member, advocating not only the thorough bridling of the king, but that of the Church. The exception was his younger companion Robert Greville, Lord Brooke, whose name is permanently linked with his in Saybrook: descendant of Harry Hotspur and of a brother of Warwick the Kingmaker; Scott's "fanatic Brook," who became a Parliamentary general and was killed

in storming Lichfield cathedral. Richard Knightley was a hereditary Puritan: imprisoned for defying Charles' forced loan; close Parliamentary ally of Eliot, Pym, Hampden, and Heselrig, and his son married Hampden's daughter. He died before the outbreak of the Rebellion, but we may easily imagine what part he would have taken. Of the remaining six less actively martial, three represented and supported the same connexion—Warwick's son Robert and his second cousin Nathaniel, and Say's son Charles; while the other three were members, and first or last magistrates, of the not exactly tame Massachusetts Bay Company —Sir Richard Saltonstall, John Humphrey whose protest over the Massachusetts patent had oddly lost him the Connecticut patent, and Herbert Pelham, the promoter of Indian missions. Of the four later members who signed Winthrop's commission, Sir Arthur Heselrig, who became Brooke's brother-in-law about 1633 or 1634, was a third of the five members. He was a man to whom conflict for his possessions, his ideas, or the ideas of more original companions who swayed him, was the breath of life; impetuous, turbulent, and somewhat bull-headed; apt to act first and think afterward. He too defied the royal measures, and pushed the bill of attainder against Strafford. In the war he raised and commanded a regiment of cuirassiers; was in many of the leading battles, and wounded in two; was governor of the northern districts in Cromwell's later campaigns, and relied upon by him before the deciding battle of Dunbar to cut off the Scotch retreat; but when Cromwell broke with the Parliament, he fought against him as fiercely as before he had fought for him. Henry Lawrence was Cromwell's kinsman and landlord, supporter of the Protectorate and of Richard Cromwell afterward. George Fenwick was a colonel in the North, military governor of Berwick (at first as Heselrig's deputy), and appointed one of the judges to try Charles I., though declining to act. I say confidently that no such body predominantly of bold and unflinching political and military leaders, mostly religious Puritans as well, can be found on any colonial patent in American history; nor anything approaching it.

Such a body was not collected by chance, nor was it primarily collected by the hope of profit. There were personal ambitions, even personal greeds and other natural desires; there were relationships and family solidarities; but on the whole they were men of high minds and spirits, willing to sacrifice much and to risk sacrificing all for their ideals in politics and religion. They were not drumming up colonists for a patented territory to which they did not care to go themselves, as with their semi-tropic islands off the Mosquito Coast, but were choosing a spot for their own permanent future. Now, that this mighty group proposed to settle in Connecticut without having at once a determination to remain settled there on their own terms, and a workable plan for accomplishing it, is to me incredible; and they were in the very thick of conditions from which they knew every move of the court, the preparations making to exterminate Puritanism and liberty from New England, and the Massachusetts resolve to fight. Very likely they

did not consider war inevitable: that they thought it too probable a contingency not to calculate for, intended to carry it through if it came, and considered the chances of success good, and that they looked on as not unlikely a hegira from Massachusetts which would rapidly build up Connecticut, I think there can be no reasonable doubt. If Dudley and Ludlow, Winthrop the senior and Cotton, and their associates in Massachusetts, were resolved to fight, it is rather improbable that Pym and Hampden, Say and Brooke, Heselrig and Knightley, were proposing to come to Connecticut and still let them fight alone; and it is even less probable that Winthrop the junior intended to let his father take part in a war while he himself held aloof from it, considering their sympathetic accord. John Winthrop's fort at the mouth of the Connecticut, and his one-year governorship, were contingently intended for something besides planting a few farmers and guarding them from Indians.

This is strikingly confirmed by the singular fact that, once the New England danger had gone by, while that in old England continued and intensified, the patentees, instead of hurrying away from the latter and thronging with their households and tenants into the former, as did the general crowd, seem to have lost their chief interest in the territory, and made no further push toward occupying it, on squatter tenancy or any other. They held their one seat for possible contingencies, but made no more foundations, and showed no signs of grudging, much less hindering, the settlement of others. They could not have hindered it, for they had not a shadow of legal claim; but they might have tried to share it, and could easily have done so. Had their first object been escape from English conditions, their conduct would have been the exact reverse of this. If they did not precisely think more of reinforcing their brethren than of gaining better conditions for themselves, at least they were very easily satisfied to bear the home burdens a while longer. As to the hermetically sealed patent, they used it rather to validate possession of what they had than to obtain more or harass others.

And now we have the full materials in our hands for relating the true story of the Warwick Patent. It is simplicity itself; scarcely so much a theory as a bare recital of known facts, up to the last item, and that follows irresistibly from the others. In 1632 Pym, Hampden, Say, Brooke, and the others, thought the English outlook discouraging for liberty of politics or religion, and determined to emigrate if a good spot could be found with or near their Puritan brethren. Saltonstall gave a bad report of the Massachusetts climate, Morton and others a bad report of the Massachusetts government. More southerly, between Plymouth and the Dutch, was vacant territory reported also to have fertile river meadows, where there would be probably a better climate and certainly a better government, for they could make their own. Warwick agreed to secure them a patent for the part of it not conflicting with Dutch claims, and so involving an undesirable contest at the outset: that is, to the Connecticut,

which making almost exactly the same 60-mile breadth as Gorges had taken for his own patent and accorded to Mason, there would of course be no question of allowing to him. He therefore had a patent drawn up for them in blank, only waiting for the Council's formal authorization to date and sign or seal it. But Gorges gave the great patents only where they would directly advance his own private ambition: he would consent only to thirty miles of breadth,—the same as he had given to his son,—or about to the Quinebaug valley. Then the whole plan fell through on account of the Massachusetts patent, and the would-be patentees gave up the scheme, though the old blank was not destroyed.

Two years later the Laudian régime began, and the band, reinforced by several other kindred spirits and connections, once more thought of emigrating. This time they turned to Massachusetts as the best remaining choice; but its democracy, though not in our day looked upon as an extreme brand, was distasteful to Say at least, and he wrote to the colony asking if it could not be changed. No answer came (not for two years, in fact); and shortly afterward the men of Massachusetts were confronted with the prospect of undergoing what they had left England to avoid, and prepared for war. In February, the Gorges ring agreed to divide up its territory, which would patent the Connecticut lands to some one else. But if the whole issue was to be fought out in any event, whoever was first in the field would remain in ultimate possession if the fight were successful, patent or no patent; and the Massachusetts brethren could not be left unaided by such a fighting body, for their cause was the cause of all. There was still a chance of building the kind of society they desired, by enabling the success of the resistance either in the old territories or the new; and the war might not come. The Massachusetts leaders were privately advised of the intention, as is shown plainly enough by Say and Sele's tone of injury in complaining later that the squatters from thence had "carved largely for themselves": there would be no point in the remark if he had not thought himself assured in advance that they would not. Indeed, the number of Massachusetts patentees in the company, and the younger Winthrop's engagement, would sufficiently evidence it. Stiles was employed to begin a settlement, and Saltonstall sent a body of his own men with him: if questioned as to their rights by Dutch or Plymouth men, he was to declare that they had a Council patent for the lands—which was true with the trifling limitation that the Council had disallowed it. Stiles and later Barnabas Davis found the meadow lands on the river taken up, the only ones usable without a great work of clearing for which they had not means or time; their verbal assertion of a patent was scouted: and they returned home.

Meantime John Winthrop the younger had been engaged for a year to build and hold a fort at the mouth of the Connecticut, and secure primary possession of the valley above by the same declaration of the patent. The position, the slender fitness for settlement just then, the limitation of time, the knowledge when he was sent that his father might very likely be engaged in war

before the year was out, all tend to confirm the views above on the motive of the expedition, as advance-guard of the Puritan leaders. But the coercion plans collapsed; the Connecticut lands were swarming with settlers who paid no attention to parole patents or the secret understandings of their chiefs: and since there was no longer need of helping Massachusetts and no chance of securing Connecticut (as we may call it), as the former would not abolish democracy and the latter could not be equipped with aristocracy, the group decided to stay in England and watch events. They could migrate to Massachusetts, the Mosquito Coast, or indeed Connecticut, at one time as well as another if worst came to worst. But they had invested money at Saybrook, and might as well hold that until they could recoup themselves. Under Lion Gardiner's management, and after the Pequots were destroyed, there seemed a good prospect of its flourishing, and Fenwick came over in person; most likely he brought with him a copy of the "patent," to read as a warrant to those not demanding a sight of it. A few years later, wanted for the Civil War, he sold out to Connecticut and went back to England. But there is no sort of doubt that he had already let the other New England magistrates into the secret: his being made one of the two Connecticut commissioners in forming the Confederation, as agent of the patentees, and the assertion of the whole body that the patent had been "shown" when the Confederation was formed, are sufficient evidence of that. That it was nothing but the blank draft of the patent made in expectance of the Council's assent, and that its western limit was the Connecticut, are evidenced by his promise to make the jurisdictional title good to that point if possible. Had it extended to the Pacific as in our "copy," it is impossible to suppose that he would not have attempted to make it good at least to the Hudson, which Connecticut held as the irreducible minimum of necessity for a claim. I doubt if Connecticut really expected the fulfilment of the promise, but the grievance was worth £500, which was used to good purpose.

Doubtless, too, Fenwick left the colony a copy of his precious document when he went home. Governor Hopkins, perhaps one of the later "patentee" company, may very well have been its custodian, and had it among his papers when he returned to England during Cromwell's time: the point is not of much importance, except as indicating once more how valueless the Connecticut officials considered it. During the entire life of the colony from 1635 to 1661, it comes to the surface but twice; once to make a pretext for admitting Fenwick into the direction of the United Colonies (the patentee body were potentially far too useful friends to slight), and once to justify holding Springfield to a colonial bargain. In neither case is any specification whatever given of the patent, or other than the briefest mention made of such an instrument as existing. But it is of importance that the other members of the Confederation cordially aided Connecticut in keeping the secret, and using the pretense of the patent to quell opposition when necessary; and upheld them in refusing to exhibit it,—a perfectly unthinkable performance on

either part if it were really valid. But in truth, neither of the other colonies had anything to gain by embarrassing and angering Connecticut on this matter. The pretense was not keeping them out of anything they claimed, Connecticut had an honest occupancy right to its lands, and if a bogus deed eased its problems, good-fellowship and New England interests urged their standing together. Moreover, three of the patentees were Massachusetts magistrates or ex-magistrates, and the whole business from the first had been concerted with Massachusetts.

But when Charles II. acceded, a new difficulty arose. Connecticut wanted her own territory by a valid title; she also wanted New Haven in a less but important degree; further, she wanted the chance of westward extension which other colonial grants had given, either to settle or trade in or trade away. If she presented to the monarch no title at all, he might grant none, and in any case there was no guessing how much he would grant or in what form. His ideas must be guided by a draft of what they wished; and if it could be represented that it was what they had already, infinitely better and surer. The old blank patent, if a copy could be found, was well enough as to form, but it had three serious defects, two of them fatal. It only granted to the Connecticut, and thus would leave out all the settlements west of the river, as well as New Haven and the territories beyond New Amsterdam; it was perhaps unsigned, almost certainly unsealed and undated,—though Fenwick's copy may have had a date added,—and would harm instead of helping their cause; and even so, it was from the Council, and there might be awkward testimony from the survivors or successors or records of the Council that none had ever been granted. Three insignificant changes were therefore demanded: to extend the boundaries from the Connecticut to the Pacific, to make the grant from Warwick personally instead of as president,—he was dead, and would have heartily agreed had he been living,—and to affix a date anterior to the time when notoriously Warwick had withdrawn from the Council.

Then beyond doubt Connecticut regretted that the despised copy of the patent had not been kept, to study the needed changes. But as the next best thing, Winthrop was openly commissioned to find it, and privately instructed to have the necessary changes made. Some part of that famous £500 for which Winthrop was not required to account probably went to hire a first-rate lawyer, who could draw up a correct patent and keep his own counsel. It is usual to intimate—even Prof. Johnston broadly hints it—that it was meant and used for a bribery fund; but this is rather absurd—that amount would hardly have satiated one of Charles' esurient courtiers. Such a sum cannot have played any figure in the market for influence on a large scale. It was needed for hundreds of minor fees and tips and lubrications, but I think for legal fees also. However this may be, the plan succeeded to admiration: the King—as the Connecticut authorities over and over proclaim, with a seriousness which may conceal an imaginable chuckle—"renewed" the Warwick patent, a fictitious copy of a non-existent original, itself

of no value had it existed unless based upon a primary grant which never was made.

This conclusion will be extremely distasteful to some, as equivalent to saying that the later stage of the patent was forgery and all stages fraud. Even the intimation that Warwick had no grant from the Council on which to base the patent is indignantly repelled by one excellent Connecticut scholar, on the ground that Winthrop would not have been a party to a fraud, "even a pious one." But this is much too unworldly a view, and these brutalities of language becloud instead of clarifying our views of men's characters and action. To apply to statesmen or soldiers, in their official deeds, the vocabulary designed for self-seeking criminals, is not history, and in my judgment not ethics. Certainly Winthrop was a very honest and honorable man, and so was Washington; but neither would have heeded a code which denied the right to use a political or a military stratagem to save or strengthen the life of a commonwealth or of an army, or would have considered the one as less legitimate than the other. And a more legitimate or harmless one than this, for a better purpose of public welfare, cannot be adduced. Fraud upon whom? Not those who had no title, for the reason that they had no title; not those who had a title, for it could not stand in their way an instant, and the users never supposed it could; not the King, who used it and was intended to use it only as a pattern, whose advisers pronounced it modeled after other colonial patents and unobjectionable, and who was quite at liberty to ignore it if he chose. And it seems to me to leave the legal as well as moral basis of the commonwealth's title much more instead of less satisfactory: based not on the paper permission of a selfish ring with no real right in equity to dispose of the territory, nor even upon the good-will of a disinterested friend; but upon the outlay, the toil, the sacrifice, the blood, the aspirations and achievements of a band of high-hearted pioneers of civilization and religion, whose more self-seeking purposes were mastered by and merged in the honest purpose to build a new society for God.